

FILED
U.S. DISTRICT COURT
DISTRICT OF MARYLAND

IN THE UNITED STATES DISTRICT COURT JAN 20 8: 23

FOR THE DISTRICT OF MARYLAND

CLERK'S OFFICE
AT BALTIMORE

* BY _____ DEPUTY

IN RE MICROSOFT CORP.
ANTITRUST LITIGATION

*

This Document relates to:
Sun Microsystems, Inc. v.
Microsoft Corp.,

*

MDL Docket No. 1332

*

Hon. J. Frederick Motz

*

Civil Action No. JFM-02-2739

* * * * *

**ORDER GRANTING SUN MICROSYSTEMS, INC.'S MOTION FOR PRELIMINARY
INJUNCTION PURSUANT TO SECTION 16 OF THE CLAYTON ACT
(15 U.S.C. § 26) AND SECTION 502 OF THE COPYRIGHT ACT (17 U.S.C. § 502)**

1089
JFM

On December 3-5, 2002, the Court conducted a three-day evidentiary hearing on the motion of plaintiff Sun Microsystems, Inc. (“Sun”) for preliminary injunction against defendant Microsoft Corporation (“Microsoft”) pursuant to Section 16 of the Clayton Act (15 U.S.C. § 26) and Section 502 of the Copyright Act (17 U.S.C. § 502). At the evidentiary hearing, the Court heard the testimony of witnesses and considered the exhibits offered by the parties. In addition to the evidentiary hearing, the Court has considered the memoranda submitted by the parties (including post-hearing supplemental memoranda) in support of and in opposition to the motion, the declarations submitted by the parties, and the arguments of counsel.

On December 23, 2002, the Court entered its opinion addressing the various contentions of both parties and setting forth the reasons the Court has decided to grant Sun’s motion for preliminary injunction. The Court refrained from entering a preliminary injunction until the parties conferred with the Court about the form of the order. On January 15, 2003, the Court conferred with counsel for the parties regarding the form of the order and considered the parties’ submissions.

For the reasons stated in the Court’s December 23, 2002 Opinion, it is hereby **ORDERED** that Sun’s motion for preliminary injunction is **GRANTED** as follows:

1. Beginning 120 days¹ after entry of this Order and until final adjudication of this matter, Microsoft and its officers, directors, employees, agents, representatives, subsidiaries, and all others in

¹ The 120 day period in which Microsoft may comply with paragraph 1 of this Order shall apply to the English and German language versions of Windows PC Operating System and Microsoft Web Browser. For the French, Spanish, Italian, Japanese, Korean, Traditional Chinese, and Simplified Chinese, Swedish, Dutch, Brazilian, Norwegian, Danish, and Finnish language versions of the Windows PC Operating System and Microsoft Web Browser products, Microsoft shall have 150 days after entry of this Order in which to comply with Paragraph 1 of this Order. For the Arabic and Hebrew language versions of such products, Microsoft shall have 180 days after entry of this Order in which to comply with Paragraph 1 of this Order. For all other language versions of such Microsoft products, Microsoft shall have 210 days after entry of this Order in which to comply with Paragraph 1 of this Order.

active concert or participation with Microsoft shall be enjoined from distributing the Windows PC Operating System or Microsoft Web Browser unless:

- a. Microsoft incorporates and distributes in each copy of its Windows PC Operating System and Microsoft Web Browser, without modification and as the Default JRE, the JRE Software delivered to Microsoft by Sun prior to the effective date of this Order²; and provided, however, that nothing in this Order shall restrict an existing volume end-user licensee of Microsoft that previously licensed Windows XP Gold to make additional copies of Windows XP Gold.
- b. Microsoft thereafter incorporates and distributes in each copy of any subsequent version, edition, upgrade, or service pack of each Windows PC Operating System and Microsoft Web Browser, without modification and as the Default JRE, the most current version of the JRE Software delivered to Microsoft by Sun at least 120 days prior to the commercial release of any such subsequent version, edition, upgrade, or service pack of each Windows PC Operating System or Microsoft Web Browser.

Microsoft shall have no obligation pursuant to this paragraph to incorporate or distribute the JRE Software in any specific language version of a Windows PC Operating System or Microsoft Web Browser that is fully localized only to a specific natural language until Sun delivers a version of the JRE Software that is localized for such natural language. For purposes of this paragraph, "localized" shall mean that the strings exposed to an end user during normal operation are presented in the local language of the end user.

² If, in response to a request of Microsoft, Sun makes any modification to the JRE Software delivered to Microsoft, Microsoft shall incorporate and distribute the modified version of the JRE Software delivered to Microsoft by Sun.

2. Beginning 90 days after entry of this Order and until final adjudication of this matter, Microsoft shall:
- a. Notify customers via any and all Microsoft update services for the Windows PC Operating System and the Microsoft Web Browser of the availability of the most current JRE Software delivered to Microsoft;
 - b. Make the most current JRE Software delivered to Microsoft by Sun available within 30 days after delivery by Sun as a recommended update, without modification and as the Default JRE, via Microsoft's update services in the same manner and for the same operating system and web browser products that Microsoft distributes the .NET Framework via Microsoft's update services; and provided, however, that Microsoft shall not be obligated to make available hereunder more than two new versions or updates of the JRE Software delivered to Microsoft by Sun in any 12-month period unless additional versions or updates are necessary to repair critical security vulnerabilities; and
 - c. Refrain from disabling, uninstalling, substituting another Java Runtime Environment for the JRE Software, or intentionally interfering with the ability to access or use any functionality of the JRE Software either directly or by inducing third parties to perform such acts.

In making the JRE Software available via Microsoft's update services, Microsoft shall provide the corresponding localized version of the JRE Software when one is available for use with a specific language version of a Windows PC Operating System or Microsoft Web Browser. When such a

localized version of the JRE Software is not available, Microsoft shall, to the extent permitted by relevant laws and regulations, provide an English language version of the JRE Software.

3. Nothing in this Order shall restrict the right of any third party (including PC original equipment manufacturers, enterprise licensees, or retail customers) to:

- a. Remove, uninstall or disable the JRE Software in the third party's copies of the Windows PC Operating System or Microsoft Web Browser; or
- b. Change the Default JRE in the third party's copies of the Windows PC Operating System or Microsoft Web Browser.

4. Nothing in this Order shall restrict Microsoft from providing general purpose functionality in the Windows PC Operating System or the Microsoft Web Browser that enables third parties independently to uninstall or remove any software, including the JRE Software, or independently to change any default setting for the Windows PC Operating System or the Microsoft Web Browser.

5. Product support for JRE Software shall be the responsibility of Sun. Microsoft shall have no obligation to provide product support for the JRE Software delivered to Microsoft by Sun pursuant to this Order, and shall direct any person requesting such support to Sun.

6. Solely to the extent that Microsoft distributes or uses the JRE Software in compliance with paragraphs 1 and 2 of this Order, such distribution and use by Microsoft shall be deemed authorized by Sun free of any claim by Sun for royalty or other compensation from Microsoft. Microsoft shall work with Sun to present licenses for the JRE Software to end users and distributors, provided that any such license must be displayed separately from, and shall not be included in, any license for Microsoft software. If a license is presented by the JRE Software itself, that shall occur after

completion of, and not interfere with, the unattended installation of a Windows PC Operating System or Microsoft Web Browser.

7. The injunctions set forth in Paragraphs 1 and 2 of this Order shall be subject to the following conditions:

- a. Certification by Sun that any JRE Software delivered to Microsoft by Sun pursuant to this Order passes the corresponding Java compatibility test suite as required by the Java Community Process;
- b. Reasonable response by Sun to any request from Microsoft for information and engineering assistance reasonably necessary for Microsoft to comply with its obligations under this Order to distribute JRE Software in Windows PC Operating Systems and Microsoft Web Browsers;
- c. Reasonable notification by Sun to Microsoft, in the same manner and on the same schedule as Sun provides such notification to other licensees who redistribute binary implementations of Sun's JRE Software, of security vulnerabilities that are known to Sun or become known to Sun and have not yet been remedied by Sun; and
- d. Agreement by Sun to indemnify Microsoft in accordance with the Limited Indemnification attached hereto as Exhibit A.

8. If Microsoft believes that Sun has not satisfied any condition set forth in Paragraph 7 of this Order, Microsoft shall nonetheless continue to comply with all of its obligations under this Order and shall promptly notify Sun in writing of the specific details in which Microsoft contends that Sun's performance is deficient. Within sixty (60) days of such notification, Sun shall either correct the

deficiencies alleged by Microsoft or inform Microsoft that it does not intend to do so. If Sun fails to correct such deficiencies, Microsoft shall be entitled to petition the Court for relief.

9. Effective immediately and until final adjudication of this matter, Microsoft and its officers, directors, employees, agents, representatives, subsidiaries, and all others in active concert or participation with Microsoft shall be enjoined from distributing:

- a. Any product that includes any copy of Microsoft's Virtual Machine for Java ("MSJVM") other than a Licensed Product;
- b. Any copy of the MSJVM, except to the extent that such copy (i) has been incorporated by Microsoft into a Licensed Product prior to the distribution of such Licensed Product by Microsoft, so that all copies of such Licensed Product distributed by Microsoft include a copy of such MSJVM, or (ii) is distributed by Microsoft to repair critical security vulnerabilities or critical customer defects in a Microsoft product in which Microsoft has (a) to the extent reasonably practicable, technically confirmed that an earlier copy of the MSJVM has been installed and (b) restricted the distribution and use of the MSJVM by license to installation in and use with only such Microsoft products as already contain an earlier copy of the MSJVM.

Nothing in this paragraph 9 shall enjoin Microsoft from distributing any Windows XP operating system product in which Microsoft has incorporated a copy of the MSJVM, or preclude Sun from seeking such relief based upon any right of Sun, including any right resulting from its termination of any license of Microsoft under the parties' January 23, 2001 Settlement Agreement (the "Settlement Agreement.")

10. For purposes of this Order:

- a. “Windows PC Operating System” shall mean any Microsoft operating system product that (i) is commercially released after Windows 2000 Professional, (ii) is designed and promoted by Microsoft for use with Intel-compatible personal computers, and (iii) either incorporates all or a portion of the .NET Framework, or for which Microsoft offers or distributes all or a portion of the .NET Framework for automatic or optional installation. “Windows PC Operating System” includes, but is not limited to, Windows XP Home, Windows XP Professional, Windows XP Tablet and Windows XP Media Center, and all successor products, editions, upgrades, or service packs thereof. “Windows PC Operating System” excludes any operating system product that is designed and promoted by Microsoft primarily for use with server computers, embedded devices, or other non-PC devices such as cellular telephones or television set-top boxes.
- b. “Microsoft Web Browser” shall mean any Microsoft product that in whole or in part provides the same or similar functionality as any version of Internet Explorer or MSN Explorer, (i) that incorporates all or a portion of the .NET Framework, or (ii) for which Microsoft offers or distributes all or a portion of the .NET Framework for automatic or optional installation. The fact that a Microsoft product can invoke the .NET Framework does not, in and of itself, bring such product within the definition of a Microsoft Web Browser.
- c. “Default JRE” shall mean the implementation of the Java Runtime Environment that is installed in the Windows PC Operating System and/or used by the

Microsoft Web Browser and which is invoked automatically when a Java applet or application is encountered, without further need for end-user control or intervention, unless the developer of that applet or application has specified the use of a different Java Runtime Environment. Notwithstanding the above, applets launched using the Applet Tag will always be executed using the Default JRE.

- d. “JRE Software” shall mean the binary implementation of Sun’s Java Runtime Environment for Windows (including the Java Plug-in) known as the Java 2 Runtime Environment, Standard Edition 1.4.1_01, and all successor versions thereof, delivered to Microsoft by Sun pursuant to this Order. Sun may modify, enhance, or add to the functionality of the JRE Software during the term of this Order, provided that any new publicly accessible application programming interface (API) introduced by Sun into the JRE Software is subject to the approval of the Java Community Process.
- e. “Licensed Product” shall mean any Microsoft product listed in Exhibit D of the Settlement Agreement and successor versions of such products into which Microsoft has incorporated the MSJVM in accordance with its rights under the Settlement Agreement. “Licensed Product” does not mean or include any service pack for such products.
- f. “.NET Framework” shall mean the set of functionality that Microsoft currently refers to as the “.NET Framework,” which includes the Common Language Runtime, the Base Framework classes, Data and XML classes, ADO.NET classes,

ASP.NET classes (including XML Web Services and Web Forms classes), and Windows Forms classes, as well as successor versions of such technologies.

11. Any confidential information that either party supplies to the other under the terms of this Order may be designated as such pursuant to the Protective Order herein.

12. Either party may apply to the Court for a reasonable extension of any time period specified in paragraph 1 or any other provision of this Order upon a showing of good cause.

13. As a further condition of this preliminary injunction, Sun shall give security within ten (10) days of this Order in the amount of \$25,000,000 for the payment of such costs and damages as may be suffered by Microsoft if it is found to have been wrongfully enjoined.

14. Based upon the representation of Microsoft that it will promptly seek a stay of this Order in the Court of Appeals for the Fourth Circuit pending its appeal hereof, and for the reasons expressed during the hearing on January 15, 2003, the effective date of this Order is stayed for 14 days from its entry so that Microsoft may file its motion for a stay and the Court of Appeals may consider that motion in an orderly fashion. In all other respects, Microsoft's request that the Court stay this Order and any preliminary injunction granted herein pending appeal is **DENIED**.

January 21, 2003


J. Frederick Motz
United States District Judge

LIMITED INDEMNIFICATION

1. Subject to the conditions and limitations set forth in Paragraph 2 below, to the extent that Microsoft distributes the JRE Software in the Windows PC Operating System or the Microsoft Web Browser in accordance with the terms of the Preliminary Injunction Order, Sun will defend or settle at its expense any claim brought against Microsoft, Microsoft's distributors, dealers or end-users that alleges that the JRE Software, or that any trademark or descriptor used by Sun in connection with the JRE Software, infringes any trademark, trade secret, copyright, patent or other proprietary right of any third party in any country in which Microsoft distributes such products in accordance with the Preliminary Injunction Order. Sun will pay any final award based on such infringement.

2. Notwithstanding any other provision in this Limited Indemnification, Sun shall have no obligation or liability hereunder if:

(a) Microsoft fails to (i) notify Sun in writing within ten (10) days of any such claim, (ii) permit Sun, in its sole discretion, to control the defense and/or settlement of any such claim, or (iii) assist and cooperate in good faith with Sun in the defense and/or settlement of any such claim;

(b) Any alleged infringement arises from: (i) modifications made to the JRE Software by or on behalf of Microsoft, or (ii) the combination of the JRE Software with any other product, program, or data, to the extent the alleged infringement arises from such combination; or

(c) Microsoft continues to distribute copies of the Windows PC Operating System or the Microsoft Web Browser that incorporate any allegedly infringing JRE Software ninety (90) days after Sun has either (i) provided Microsoft a non-infringing substitute for the JRE Software that is alleged to infringe, or (ii) terminated Microsoft's limited license to distribute products that incorporate such software.

3. Except as expressly set forth above, no other or additional indemnity or obligation of Sun shall be implied or inferred from any provision of this Limited Indemnification or the conduct of either party unless expressly agreed to in writing signed by a duly authorized representative of Sun.

January ___, 2003
